

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: March 29, 2007
POSITION: Oppose
SPONSOR: Sheet Metal and Air Conditioner Contractors

BILL NUMBER: SB 619
AUTHOR: C. Migden
RELATED BILLS: SB 593

BILL SUMMARY: Public Contracts: Retention Proceeds

This bill would limit the amount of retention proceeds of public contracts including all contractors and subcontractors thereunder to five percent for progress payments and overall contract amounts.

FISCAL SUMMARY

According to staff at the Department of General Services (DGS), this bill would likely result in significant cost increases to construction projects because private contractors would have less incentive to fulfill their contractual obligations. In turn, the state would be more likely to incur additional construction costs due to the subsequent construction delays associated with rebidding for the unfinished work.

COMMENTS

The Department of Finance (Finance) is opposed to this bill because it could potentially generate significant cost increases as well as negatively impact the timely completion of construction projects.

Existing law requires retention proceeds to equal not less than five percent of payment and/or total contract amount. This bill would instead change the retention-proceeds amount to a limit of five percent.

Specifically, this bill would do the following:

- Limit the retention proceeds withheld from any payment by a public entity from the original contractor, by the original contractor from any subcontractor, or by a subcontractor from any subcontractor thereunder to no more than five percent of any payment and not exceeding five percent of the total contract price.
- Require that the percentage of the retention proceeds withheld between the original contractor and a subcontractor or between a subcontractor and any subcontractor thereunder may not exceed the percentage specified in the contract between the public entity and the original contractor.
- Specify that these provisions will apply to all contracts entered into on or after January 1, 2008.

According to staff from the DGS, current state policy regarding the level of retention proceeds is five to ten percent. The author's office believes that the five to ten percent level of retention proceeds for public contracts diminishes the likelihood of California small businesses being able to fully participate in the next wave of infrastructure projects and public-works developments that were approved by voters in 2006.

By placing a five-percent ceiling on retention proceeds, staff from the DGS assert that the state will incur greater costs for construction projects due to the likelihood of contractors not finishing their construction assignments because it would cost the contractors less to lose their retention proceeds than it would for them to finish their work. According to the DGS, this bill would increase the risks for construction-cost overruns and other costs associated with having to hire replacement contractors. One specific example

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Analyst/Principal (0672) T. Bierer	Date	Program Budget Manager Karen Finn	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS	Form DF-43 (Rev 03/95 Buff)
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BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

C. Migden

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SB 619

COMMENTS (continued)

offered by the DGS dealt with the task of "air balancing" a building's heating, ventilation, and air-conditioning system (HVAC). Air balancing requires a contractor to perform tests of a building's uniformed temperature and appropriate air flow. This task can be very time consuming and it is one of the last duties that a contractor will have to provide in order to finish a new construction project. If the retention proceeds are limited to five-percent of a payment or total contract amount, it would be advantageous for a contractor to forfeit the retention proceeds in favor of avoiding the amount of time that could be necessary to finish this part of a project. In addition, Finance is opposed to this bill because it would potentially delay the completion of construction projects due to the rebidding process.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO	PROP							Fund
	RV	98	FC	2006-2007	FC	2007-2008	FC	2008-2009	Code
1760/Dept Gen Svc	SO	No	-----	See Fiscal Summary				-----	0001